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But if we accept the view of the Court as to the effect of the law; if the tax is to be regarded as falling on the individual non-resident stockholders, the corporation acting merely as agent for payment, it is submitted that the law in question violated Art. IV, Sec. 2, U. S. Constitution ("the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"), and that the reasoning of the court is open to question. The court argues: (a) that "privileges and immunities" under Art. IV, Sec. 2, are "those civil rights belonging to all citizens of the State" "by virtue of their citizenship"; (b) that uniformity of taxation could not be insisted on by citizens of Connecticut among themselves; that the legislature could divide them into classes on the basis of residence within the State and tax these classes unequally; (c) that therefore the legislature could classify shareholders in its domestic corporations on the basis of residence in and out of the State and might tax these two classes differently. There is here a *non sequitur*. We cannot say that because A has only those rights which B has, and B has not right X, therefore A has not right Y. Citizens of Connecticut may not have the right to insist on "uniformity" and "equality" in taxation of classes within the State; but they can protest against special taxation. Now it is this right to immunity from special taxation which the statute in this case invaded. Each non-resident was taxed differently from all citizens of Connecticut, without regard to classification of citizens within the State. [For a case where non-residents were properly classified, see *Redd v. St. Francis*, in 17 Ark., 416 (1856)]. This amounted to special taxation of each non-resident shareholder. For "special taxation," if used within reference to A. B, a citizen of Connecticut, would mean that A. B, without regard to classification of citizens within the State, had been taxed differently from all other citizens of the State.

TAXATION—SITUS OF STOCK.—It was further contended by the Court in *State v. Traveler's Ins. Co.*, that by purchasing shares of stock in a domestic corporation, non-residents participated in the grant of a corporate franchise; that the discriminating tax was incidental to the grant (the defendant's charter in this case was amendable or repealable at pleasure); that, therefore, the obligation to submit to the discriminating tax was incidental to the acceptance and enjoyment of the grant. Can a distinction, then, be drawn between natural tangible property, and property artificially created by the Legislature? May a State impose a special tax on shares of stock in one of its own corporations, when owned by non-residents, on the ground that the State created the property? It is submitted that this theory (25 Am. and Eng. Cyc. of L., 664) is unsound and finds no support in those cases cited to sustain it, which recognize only the power of the State to fix the *situs* of shares in a domestic corporation within the State for purposes of taxation, to the extent of separating this *situs* from the residence of the owner. This

power of the State may be conceded. A State when creating property may specify its attributes, *e. g.*, that it can never wholly be removed out of the State so as to become untaxable therein; that shares owned by a non-resident shall be deemed to exist at a certain place within the State (*semble*, even though the local tax rate at that place be the highest within the State). The creating power may make a "law for the property," *Tappan v. Bank*, 19 Wall., 490 (1873); per WAITE, C. J., *i. e.*, define its nature. But once the *nature* of the property is fixed, once the attribute of salability is given to it, it cannot then be treated specially when non-residents are concerned with it. The case of *Stockholders v. Board et al.*, 13 S. E., Va., 407 (1891), and *American Coal Co. v. County Comr's* 59 Md., 185 (1882), (Cf., 57 Md., 31; Thompson on Corporations, § 2849) recognized only the right to fix the *situs* of stock owned by non-residents. In these cases the stock, once its *situs* had been determined, was all liable to municipal taxation. Any difference in the degree of taxation arose from the location of the stock, not from a special tax founded on non-residence of the owners.

In *Corfield v. Coryell*, 4 Wash. C. C., 371, 381 (1823) [quoted with approval, *Blake v. McClung* (172 U. S., 239, 1898)], "the right to take, hold, and possess property" "of every kind," was recognized as one of the "privileges" guarded by Art. IV, Sec. 2, U. S. Constitution. Are not shares of stock to be included in this classification?

If a State wishes to tax shares, in its own corporations, owned by non-residents, which would ordinarily escape taxation, it must either impose a special tax on corporations, to be borne by all stockholders; or else fix the *situs* of the shares by legislation, and thus subject them to local taxation.